



## ***CLOSED CASE SUMMARY***

ISSUED DATE: SEPTEMBER 9, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0597

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct...	Not Sustained (Inconclusive)
Imposed Discipline		
Forwarded to CCSC for Discipline		

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee violated the law and other Department policies as a result of an off-duty incident.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1), a civilian employee of SPD, is in a domestic relationship with the Subject. They live together in the same residence. They also own a business together with a third party. On September 15, 2021, NE#1, the Subject, and their business partner went out for dinner and drinks. The three remained at the restaurant until it closed at around 10:00 p.m. NE#1 and the Subject returned to their home and their business partner went his separate way.

At approximately 11:27 p.m., the Subject was pulled over by officers employed by the Federal Way Police Department (FWPD). She was alone in the vehicle at that time. The Subject, who was emotional, told the FWPD officers that she was assaulted by NE#1 earlier that evening at their home and that she subsequently fled in her vehicle. The Subject specifically stated that NE#1 struck her in the back of the head and knocked her unconscious. The Subject was not investigated for or arrested for DUI.



The FWPD officers responded to the home. They spoke with NE#1 who denied striking the Subject. NE#1 said that they went to the restaurant because the Subject had been feeling depressed. They both drank at the restaurant and then the Subject drove home. The Subject was speeding, and NE#1 told her to slow down because the Subject had previously been arrested twice for DUI. When they got home, the Subject went to where their safe was located. NE#1 kept her firearm in the safe and was worried that the Subject would access it. When she entered into the bedroom, the Subject fell to the ground. She tried to see whether the Subject was okay, but the Subject grabbed her car keys and fled the home. NE#1 was described by multiple officers as intoxicated. Officers indicated that she smelled of alcohol and was slurring her words.

NE#1 told the officers that the incident may have been recorded on her home security system. The video did not show what occurred but did capture audio of a disturbance and loud noises. NE#1 also had video of the incident on her cell phone. She showed the video to the officers. One of the officers – referred to here as Witness Officer #1 (WO#1) – believed that NE#1 deliberately spoke over the video and left her finger on the phone to prevent him from seeing what occurred. He further stated that he was worried by her actions that she would delete the video and he took her phone to prevent her from doing so.

Ultimately, probable cause was developed to arrest NE#1 and she was taken into custody. The FWPD officers placed her phone and firearm into evidence and photographed the scene. NE#1 was later booked for domestic violence (DV) assault. The Subject was transported to a hospital for treatment. She was treated for neck pain and was diagnosed with a contusion. The cause was listed as assault.

As FWPD continued its investigation in the DV assault, the Subject began to change her story. In a supplemental statement to FWPD, the Subject stated that NE#1 did not strike her in the head and knock her unconscious. She then stopped cooperating with FWPD's investigation. FWPD screened the case with the King County Prosecuting Attorney's Office; however, charges were declined due to the Subject's lack of cooperation. After charges were declined, the case was returned to OPA and OPA commenced this administrative investigation.

As part of its investigation, OPA reviewed the criminal investigation completed by FWPD. OPA interviewed several FWPD employees. OPA also interviewed NE#1, the Subject, and the business partner.

The FWPD employees included those who pulled the Subject over. All stated that there was insufficient evidence to establish that the Subject was DUI. For example, none of the officers smelled alcohol on the Subject's breath or heard her slur her words.

WO#1 again affirmed his belief that NE#1 deliberately spoke over the recording of the phone when playing it for the officers. He felt that this was intended to hide this evidence from the officers. He said that he seized her phone because he felt that she would destroy the video evidence. Two other FWPD employees described NE#1 as completely cooperative; however, neither observed WO#1's interaction with NE#1.

The Subject said that she, NE#1, and the business partner went to dinner. They all consumed alcohol. The Subject said that she had two beers and a Jell-O shot. When they left the restaurant, the business partner was very intoxicated. They offered him a ride, but he declined and drove away. The Subject said that she did not remember what occurred from that point on until when she regained consciousness while on the floor. She said that this was "sobering." She then fled the home, striking NE#1's car as she did so. She told OPA that she assumed that NE#1 had



hit her but did not actually recall that this occurred. She then relayed her belief to FWPD when she was stopped. She stated that she later recanted this statement to FWPD.

The Subject told OPA that she watched their personal security video that showed her hurrying to their safe. She recalled that she was getting her passport so that she could go buy marijuana. She said that this video, which was deleted around five days later, convinced her that she fell and hit her head, rather than that she was struck by NE#1.

The Subject believed that she was intoxicated but she did not feel that she was drunk when she left the restaurant. She acknowledged that she could have made the statement about NE#1 striking her in order to deflect suspicion that she was DUI but said that she did not feel that this was her "intention."

She and NE#1 have discussed the criminal case and NE#1's arrest. It has strained her relationship. The Subject said that NE#1 had not threatened her or coerced her regarding either the FWPD or OPA investigations. She and NE#1 did discuss what she should say at the Subject's OPA interview. Specifically, NE#1 told the Subject not to say that the business partner was intoxicated.

The business partner told OPA that the dinner was initially "lighthearted" but grew more tense as they discussed his business recommendations. He did not see NE#1 and the Subject arguing. He later heard that NE#1 had legal troubles, but he did not know the specifics. OPA attempted to reinterview the business partner after learning about his potential intoxication level. However, the business partner did not respond to OPA. OPA sought security video from the restaurant to see whether the business partner's intoxication level could be assessed, but no video existed.

NE#1 denied that she hit the Subject. She reiterated her story that the Subject fell on her own volition. NE#1 told OPA that she was worried that the Subject was trying to access the gun in their safe because of the Subject's ongoing suicidality. NE#1 said that she did not believe that the Subject was intoxicated when they left the restaurant. She said that the Subject continued drinking when they got home and until she fell to the ground. NE#1 believed that the Subject was intoxicated when she drove from the home, struck NE#1's car, and was then pulled over. NE#1 opined that the Subject alleged a DV assault to take the officers' attention away from her potentially being DUI.

NE#1 said that she did not try to obstruct WO#1 from viewing the recording on her phone. She contended that she was cooperative during FWPD's investigation.

NE#1 told OPA that she did not believe that the business partner was intoxicated when he left the restaurant and said that he indicated that he was okay to drive. She asserted that she did not tell the Subject to not discuss the business partner's intoxication with OPA. She did not know why the Subject would have said that.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It was alleged that NE#1 violated the law when she committed DV assault towards the Subject.



As a threshold matter, OPA believes that there was sufficient probable cause to arrest NE#1 on the date of the incident. She was identified as the primary aggressor by the Subject who had not, up until that time, recanted. NE#1 was intoxicated while the Subject was not noticeably so. Moreover, NE#1 did not present any evidence exonerating herself.

This calculus changed, however, once the Subject recanted to FWPD and then refused to further cooperate. Her lack of cooperation caused the charges against NE#1 to be dismissed.

The Subject renewed her recanting during her OPA interview. She acceded that it was possible that she told officers about the alleged assault because she wanted to avoid a DUI but said that this was not necessarily her intent.

The Subject's changing of her statement prevents OPA from conclusively determining that NE#1 engaged in a DV assault. This is the case even though OPA finds that alternate explanation of what occurred less than convincing. Under NE#1's recitation of the facts, the Subject was rushing towards the safe and collapsed. This was the case even though the Subject had been sober enough to drive home and when she was not found to be intoxicated by any of the FWPD employees. The Subject's account is no less convincing – she does not remember what occurred after leaving the restaurant until she woke up on the floor. This coincidentally coincided with when the assault allegedly took place.

OPA believes it likely that some altercation took place due to the fact that video taken in the home contained noises of an argument and a loud noise. Moreover, OPA notes that it is not uncommon for DV victims to recant, particularly when charges against the perpetrator could have significant negative outcomes for that individual's career.

The above being said and despite OPA's concerns with this incident and NE#1's conduct, OPA cannot find that a crime occurred when applying the requisite burden of proof. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

#### **Named Employee #1 - Allegation #2**

##### ***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. OPA alleges that NE#1 may have been dishonest in the following respects: (1) when she denied hitting the Subject; (2) when she denied trying to influence the Subject's OPA testimony; (3) when she tried to obstruct WO#1 from observing the video on her cellphone.

With regard to the first potential dishonesty, it is inconclusive for the same reasons as stated above. With regard to the second potential dishonesty, NE#1 denied trying to influence the Subject and OPA has no evidence conclusively indicating which one of them is telling the truth. While OPA does not see any motive for why the Subject would have made this up, OPA cannot definitively establish this. With regard to the third potential dishonesty, there were no witnesses to NE#1's conduct surrounding her cellphone except for NE#1 and WO#1. They disagree as to what occurred.



Even though OPA has significant concerns regarding NE#1's veracity, OPA cannot meet its burden of proof to find that she was dishonest. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.)

While there is insufficient evidence to conclusively establish that NE#1 was dishonest, committed a DV assault, or interfered in the criminal and OPA investigations, OPA has no difficulty concluding that the totality of her conduct was unprofessional.

When weighing the evidence, OPA finds that NE#1 very likely allowed the Subject to drive their vehicle from the restaurant while potentially impaired. OPA also determines that NE#1 engaged in acts that necessitated 911 being summoned to her home and was deemed to be sufficiently culpable that she was placed under arrest and booked into jail. OPA notes that the story provided by NE#1 is not particularly credible or believable and, but for the Subject recanting, it is likely that she would have been charged and prosecuted.

OPA believes that NE#1 engaged in acts that were embarrassing to the City and diminished public trust and confidence in her. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct...***

SPD Policy 5.002-POL-3 states that: "Employees shall not discourage, interfere with, hinder, or obstruct any person from filing a complaint or conducting or cooperating with an investigation of an allegation of a policy violation."

It was alleged that NE#1 violated this policy when she tried to interfere with WO#1 observing the video on her cellphone and again when she tried to influence the Subject to provide untrue testimony to OPA.

As discussed above (see Named Employee #1 – Allegation #2), OPA cannot conclusively establish either violation given the disputes of fact in the record and the lack of sufficient evidence.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**